

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2622 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

N.P.SONI

Versus

PERFECT ENGINEERING COMPANY

Appearance:

MR PV HATHI for Petitioner

MR MN DEVNANI for MR YOGESH S LAKHANI for
Respondents

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 22/08/2000

ORAL JUDGEMENT

#. The petitioner challenges the award dated 13th May, 1991, passed by the Labour Court, Rajkot in L.C.R. No.1387 of 1983 by which, instead of granting

reinstatement and backwages to the petitioner, he has been awarded a compensation amount in lieu of reinstatement and retrenchment compensation.

#. The petitioner was working as a Helper in packing department of the respondent concern and according to him, after having put in more than eighteen years' service, his employment was orally terminated without payment of any retrenchment compensation under Section 25F of the Industrial Disputes Act, 1947.

#. The grievance voiced on behalf of the petitioner is that though the Labour Court found that the retrenchment of the petitioner was illegal, it did not order his reinstatement with full backwages but instead awarded Rs.10,000/= as notice pay and retrenchment compensation and Rs.5,000/= by way of compensation in lieu of his reinstatement in service. It was submitted that in doing so, the Labour Court has erroneously exercised its jurisdiction.

#. The learned counsel appearing for the respondents, on the other hand, submitted that after the award and before filing of the petition, the petitioner has in fact accepted the amount of compensation as awarded and therefore should be deemed to have waived his right to challenge the impugned award. It is further argued that it was not possible to reinstate the petitioner in service because the respondent No.1-firm had closed down. It was also argued that despite intimation given by respondent No.1 in their letter Ex.26 to the Assistant Labour Commissioner, the petitioner did not come to collect his dues of retrenchment compensation and therefore, there was no fault on the part of the respondents.

#. It appears from the record that the Labour Court came to finding of fact on the basis of material on record that the petitioner had put in eighteen years of service with the respondent No.1-firm and his employment was orally terminated on 1.6.1983 without payment of any retrenchment compensation. The Labour Court took note of the fact that even the employer - Dhirajlal Vallabhdas had admitted in his deposition that the petitioner had worked with them for eighteen years. In his cross-examination, Dhirajlal has stated that the name of the petitioner appeared in the Muster Roll of respondent No.1 till 1982 and thereafter it was transferred by them to the Muster Roll of respondent No.2. The Labour Court came to a finding that the termination of employment of the petitioner was illegal and this part of its finding

has not been challenged. The Labour Court, however, instead of ordering reinstatement with backwages as a direct consequence of such a finding, proceeded to consider one letter Ex.26 which was written on 14.12.1983 by the employer to the Assistant Labour Commissioner and relying upon the contents of that letter, denied reinstatement and backwages to the petitioner. The said letter dated 14.12.1983 was written by the employer to the Assistant Labour Commissioner at the instance of the Assistant Labour Commissioner himself as stated in his deposition by Dhirajlal, who was managing the affairs of both the firms. The Labour Court failed to notice that much before the said letter dated 14.12.1983 was written, the Reference was already made pursuant to the Commissioner's order dated 28.11.1983. This means that the Conciliation must have failed even before that. Therefore, there was no occasion for the respondent-employer to have written such a letter after the Conciliation failed and after the Reference was made to the Labour Court. While referring to the contents of the said letter Ex.26, in paragraph-10 of its award, the Labour Court observed that it was clear from the said letter that the financial condition of the respondent No.1-firm was weak and that the partnership had dissolved. It will be seen that there was no reference in the said letter about dissolution of the partnership. Dhirajlal, has in his deposition stated that two years prior to the date of his deposition, the respondent No.1-firm had closed down but he has admitted that he was managing both the firms and the services of the petitioner were taken over on the Muster Roll of respondent No.2. That was internal arrangement which clearly entitled the petitioner to be reinstated in employment even with the respondent No.2. The petitioner was not given any option in the matter as is clear from the record. In both the firms, the partners were different combination of brothers and father and for the internal arrangement that respondents made, the petitioner cannot be made to suffer. In short, the letter Ex.26 could never have been relied upon by the Labour Court for denying the relief of reinstatement and backwages to the petitioner. The Labour Court committed error apparent on the face of the record of its decision in relying upon the said letter Ex.26 which was written to the Assistant Labour Commissioner after the Conciliation failed and after the Reference was made to the Labour Court. There was absolutely no valid reason for deviating from the normal rule that an illegal termination of employment without payment of retrenchment compensation entails reinstatement with full backwages. The impugned award therefore cannot be sustained and it

is hereby set aside and directed that the petitioner be reinstated in service with full backwages. Any amount that may have been paid pursuant to the impugned award to the petitioner will stand adjusted towards the backwages that may be now be payable to him. Rule is made absolute accordingly with no order as to costs.

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(sunil)